IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

AR.No. 23 of 2006()

PETITIONER:

K.H.SALIM, KARUKATHARAYIL HOUSE,
NJAKKANAL, KRISHNAPURAM P.O., KARTHIKAPPALLY
TALUK, ALAPPUZHA DISTRICT REPRESENTED BY HIS
POWER OF ATTORNEY HOLDER SHRI.U.MOHAMMED,
ALUMMOTTIL SEBI MANZIL, CHERAVALLY, KAYAMKULAM.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

RESPONDENT:

SABU STEPHEN, PROPRIETOR,
M/S.HIRISE BUILDERS, VALIYOTTUKONAM,
PERUKAVU P.O., PEYAD, THIRUVANANTHAPURAM.

BY ADV. SRI.S.SREEKUMAR
SRI.G.UNNIKRISHNON

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.K. BALI, C.J.

A.R.No.23 of 2006

Dated this the 29th day of November, 2006.

ORDER

V.K.Bali,C.J.(Oral)

The prayer in this application filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, hereinafter referred to as the Act of 1996, is for appointment of an Arbitrator. It is the case of the petitioner that he and the respondent are parties to a contract which contains an arbitration clause for appointment of an Arbitrator. Invoking the said clause, the petitioner by Annexure VI notified the respondent to appoint an Arbitrator from among the panel suggested by the petitioner or to suggest a new Arbitrator to resolve the disputes between the parties in relation to the agreement. The respondent did not agree to the appointment of Arbitrator and therefore the present application is filed.

2. On notice the respondent has entered appearance through his counsel Mr.G.Unnikrishnan and filed a counter affidavit.

3. The only point on which the request contained in the application is sought to be contested is that clause 15 of the agreement (Annexure I) which is reproduced below refers to Arbitration Act, 1940 and therefore the clause itself is void ab initio:

> "15. If at any time during the progress of the works or after completion of the alleged completion thereof and at any time during the continuance of this agreement any dispute or difference arise between the parties hereto in relation to or in connection with this agreement, the same shall be referred to the arbitrator and the provisions of the Indian Arbitration Act, 1940 shall apply. The decision so given shall be final and binding upon the parties."

The contention raised by the learned counsel for the respondent needs to be summarily rejected. The Act of 1996 came into effect on 25.1.1996. By virtue of sub-section (1) of Section 85 of the Act of 1996 dealing with repeal and saving, the Arbitration Act of 1940 has been repealed. It is absolutely apparent that the mentioning of the Act of 1940 in clause 15 reproduced above is an inadvertent mistake. As surely, if the parties were conscious of the fact that the Act of 1940 has since been repealed there was no question to make mention thereof. In that case the only

mention in the clause would have been of the Act of 1996. That there is an arbitration clause in the agreement is not in dispute and therefore the mere fact that by sheer inadvertence which can be a common mistake of the parties if Act of 1940 has been mentioned in clause 15, it should not make any difference. The prayer in the application is allowed. With the consent of the parties Mr.K.Ramachandran, retired District Judge is appointed as Arbitrator to enter into the dispute between the parties and give an award in accordance with law.

The application is disposed of accordingly.

V.K. BALI,
Chief Justice.

vns.